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MARITIME LIENS — MATERIALMAN'S LIEN — WHAT LAW GOVERNS. — A Russian ship was mortgaged in England. Later she proceeded to Copenhagen and was supplied with necessaries for which by Danish law the materialman acquired a maritime lien on the ship, good against all prior interests therein. The ship was libeled and sold in Scotland. By Scotch law a mortgage took precedence over the claim of a materialman. *Held*, that the law of the forum be applied and the English mortgagee preferred to the Danish materialman. *Constant* v. *Klompus*, 50 Scot. L. Rep. 27. See NOTES, p. 356.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — RECOVERY FOR INJURY AGAINST THIRD PARTY: RIGHT TO SUBSEQUENT RECOVERY AGAINST EMPLOYER. — The plaintiff, an employee of the defendant, while acting in the course and scope of his employment, was injured by the negligence of a third party. He sued the third party and recovered, giving a release of his claim against him. The plaintiff then sued his employer under the Workmen's Compensation Act of the state. *Held*, that the plaintiff can recover. *Perlsburg* v. *Muller*, 35 N. J. L. J. 299 (N. J. C. P., 1912).

The right of the injured employee against his employer seems contractual in nature. The employer has undertaken to indemnify the employee for injuries arising out of the employment. His obligations, therefore, in case of accident, seem closely analogous to those of an insurer. A provision of the English act which has been substantially followed in many states subrogates the employer to the injured employee's right of action against a negligent third party. STAT. 6 EDW. VII, c. 58, § 6; KAN., SESS. LAWS, 1911, c. 218, § 5; ILL., LAWS, 1911, p. 324, § 17. Without such a statutory provision, on analogy to insurance probably subrogation should not be allowed. It is true that subrogation is permitted in fire insurance. *Mason* v. *Sainsbury*, 3 Dougl. 61. But no case of subrogation in life insurance can be found. The probable reason is that courts regard the contract as not for indemnity but to pay a fixed sum on the happening of an event. See *Insurance Co.* v. *Bailey*, 13 Wall. (U. S.) 616, 619. But see MAY, INSURANCE, 4 ed., § 7. Even treating life insurance contracts as valued indemnity policies, the pecuniary damage done by death is so purely conjectural that perhaps under no circumstances can we say the insured is fully indemnified. In accident insurance the pecuniary damage to the insured can frequently be more readily determined, but the same reasoning, although with less force, applies. In accident insurance there seems to be no case of subrogation, and it has been held affirmatively that subrogation will not be allowed. *Ætna Life Ins. Co.* v. *Parker*, 96 Tex. 287, 72 S. W. 168. Since the employer cannot interpose a set-off, a complete recovery is justified in the principal case.

MECHANICS' LIENS — RIGHT TO ENFORCE LIEN AGAINST LESSOR. — A lessee contracted in his lease to build upon the leased premises. The lessor was not to be chargeable for the lessee's contracts, but on termination of the lease the improvements were to belong to him. The lease being forfeited, an action to enforce a mechanic's lien was brought against the lessor. *Held*, that the lien will not bind the lessor. *Weathers* v. *Cox*, 76 S. E. 7 (N. C.).

Under various statutes a mechanic's lien clearly binds the lessee's interests. *Dutro* v. *Wilson*, 4 Oh. St. 101; *Cornell* v. *Barney*, 94 N. Y. 394. In general, however, it should not bind a lessor's estate unless by express consent he has actually connected himself with the building contract. *Francis* v. *Sayles*, 101 Mass. 435; *Rothe* v. *Bellingrath*, 71 Ala. 55. The lessor's consent cannot ordinarily be inferred by estoppel, or from the relation of landlord and tenant. *Mills* v. *Matthews*, 7 Md. 315; *Conant* v. *Brackett*, 112 Mass. 18. Nor can consent be inferred from a lease providing for repairs or improvements by the

lessee, even if the lessor is ultimately to reimburse him therefor. *Conant* v. *Brackett, supra*; *Rothe* v. *Bellingrath, supra*. *A fortiori* there is no consent in the principal case, since the lessor expressly denies the lessee the use of his credit. Some decisions hold the lien runs against the lessor, relying on the express wording of their state statutes. *Carey-Lombard Lumber Co.* v. *Jones*, 187 Ill. 203, 58 N. E. 347; *Burkitt* v. *Harper*, 79 N. Y. 273. Others obtain this result by incorrectly inferring a fictitious agency between lessor and lessee and construing an improvement lease as a building contract. *Hall* v. *Parker*, 94 Pa. St. 109; *Kremer* v. *Walton*, 11 Wash. 120.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — DEATH AFTER SEVEN YEARS. — In 1873 the intestate's sister, thirty-four years of age, disappeared from the house where she had been a domestic servant for ten years, leaving behind all her personal effects, and was not heard of thereafter. In 1910 the intestate died, leaving property to a part of which the sister would be entitled if living. The other heirs claimed the whole estate. *Held*, that the death of the sister is not established. *In re Benjamin*, 137 N. Y. Supp. 758 (Surr. Ct., N. Y. Co.).

Conclusive presumptions are rules, not of evidence, but of law. But presumptions, when legitimately applied, are presumptions of fact and leave the matters assumed open to further proof. The burden of going ahead is merely shifted to the other party. *Scott* v. *McNeal*, 154 U. S. 34, 14 Sup. Ct. 1108. See *Hoyt* v. *Newbold*, 45 N. J. L. 219, 222. In general a person is presumed to be alive until after such time as he would die of old age. See *Hammond's Lessee* v. *Indoes*, 4 Md. 138, 174; *Hopfensach* v. *City of New York*, 173 N. Y. 321, 324, 66 N. E. 11, 12. By judicial legislation, a series of cases, following the analogy of two seventeenth-century statutes, created an arbitrary presumption of death after seven years' absence. *Doe* v. *Jesson*, 6 East 80; *Hopewell* v. *De Pinna*, 2 Campb. 113. See *Burr* v. *Sims*, 4 Whart. (Pa.) 150, 170. In many jurisdictions continuous unexplained absence for seven years without tidings will raise the presumption of fact in spite of other circumstances surrounding the disappearance. *Wentworth* v. *Wentworth*, 71 Me. 72. See *Schaub* v. *Griffin*, 84 Md. 557, 563, 36 Atl. 443. Under such a rule the principal case would undoubtedly be wrong. But it is submitted that additional circumstances, such as youth, health, or a roving disposition, should in certain cases prevent the creation of the presumption. Thus, the presumption, which is convenient in many cases, will not necessarily cause injustice if the adverse party has no rebutting evidence. *Czech* v. *Bean*, 35 N. Y. Misc. 729, 72 N. Y. Supp. 402; *Vought* v. *Williams*, 120 N. Y. 253, 24 N. E. 195. In the principal case, the circumstances surrounding the disappearance hardly seem to furnish grounds to deny the ordinary presumption.

PROHIBITION — WHETHER A WRIT OF RIGHT. — The petitioner, being threatened by an unconstitutional tribunal, demanded a writ of prohibition. On refusal, a petition to establish exceptions was brought. *Held*, that the petition will be allowed. *Curtis* v. *Cornish*, 84 Atl. 799 (Me.).

The principal case seeks to rely on the principle laid down by the United States Supreme Court that a writ of prohibition issues of right in the absence of other means of redress, and at discretion where there is another legal remedy. *Smith* v. *Whitney*, 116 U. S. 167, 6 Sup. Ct. 570; *In re Cooper*, 143 U. S. 472, 12 Sup. Ct. 453. But the application seems doubtful, since *certiorari* or a writ of error would be available, though probably inadequate, alternative remedies. Many American courts treat the writ as wholly discretionary and hence not reviewable on appeal. *State ex rel. Osborn* v. *Houston*, 35 La. Ann. 538; *People ex rel. Adams* v. *Westbrook*, 89 N. Y. 152. In England the remedy ordinarily